

**APPROVED MINUTES
SUNNYVALE CITY COUNCIL
TUESDAY, APRIL 22, 2008**

5 P.M. SPECIAL COUNCIL MEETING (Closed Session) - Conference with real property negotiator. Property: Town Center project. Negotiating parties: Amy Chan (Redevelopment Agency), Peter Pau (Sand Hill Properties). Under negotiation: Cost contribution to environmental remediation under ARDDOPA.

6 P.M. SPECIAL COUNCIL MEETING (Closed Session) - Public Employee Informal Performance Evaluation, City Manager, Pursuant to Government Code Section 54957.

7 P.M. REGULAR MEETING

SALUTE TO THE FLAG

Mayor Spitaleri led the salute to the flag.

ROLL CALL

PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Melinda Hamilton
Councilmember John Howe
Councilmember Otto Lee
Councilmember Ron Swegles
Councilmember Christopher Moylan
Councilmember David Whittum

ABSENT:

None

STAFF PRESENT:

City Manager Amy Chan
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Community Development Hanson Hom
Director of Public Works Marvin Rose
Planning Officer Trudi Ryan
Senior Management Analyst Pete Gonda
City Clerk Gail Borkowski

CLOSED SESSION REPORT FOR APRIL 22, 2008

Vice Mayor Hamilton reported that the City Council met in Closed Session earlier this evening regarding: Conference with real property negotiator. Property: Town Center project. Negotiating parties: Amy Chan (Redevelopment Agency), Peter Pau (Sand Hill Properties). Under negotiation: Cost contribution to environmental remediation under ARDDOPA.

Vice Mayor Hamilton reported that direction was given, but no action was taken.

Vice Mayor Hamilton reported that the City Council met in Closed Session earlier this evening regarding: Public Employee Informal Performance Evaluation, City Manager, Pursuant to Government Code Section 54957.

Vice Mayor Hamilton reported that no direction was given and no action was taken.

SPECIAL ORDER OF THE DAY

Earth Day Proclamation

SPECIAL ORDER OF THE DAY

Recognition of Green Businesses

PUBLIC ANNOUNCEMENTS

Councilmember Moylan announced an upcoming Public Safety Open House.

Councilmember Moylan announced that members of the public are able to offer their comments to the executive search firm as to what values and traits they would like to have considered in seeking the City's new city manager.

Councilmember Howe requested that the mayor close the meeting in honor of Browning Smith. Councilmember Howe stated he would prefer to offer his comments at this point in the meeting rather than wait to the end of the meeting. Councilmember Howe requested that the following comments be added to the minutes:

Browning Smith, a long-term resident of Sunnyvale, suffered a fatal heart attack on Wednesday, April 2. His wife, Katie, found him lying on the kitchen floor. She called 911 and fire and police personnel were there in minutes. Katie says the men were "wonderful" and did everything they could to revive Browning and comfort her.

Browning was born on February 3, 1941, in Hastings, Oklahoma. He attended Oklahoma University and married Katie in 1964. They moved to Sunnyvale in 1967 where Browning worked for Lockheed until retirement in 1998.

Browning is survived by three siblings, Katie his beloved wife, three children, Rodger, Michael, and Sherri, who all attended public schools in Sunnyvale. Browning left behind six grandchildren, a host of friends, and Christian brothers and sisters.

Browning was a long-term member of the Campbell Church of Christ, where he served in many leadership capacities including his service as an elder for 21 years. He is much loved by family and friends.

Councilmember Howe stated that he considered Smith to be an excellent friend and his family to be a wonderful family and he will be greatly missed.

Caroline Vissers and Arian Behzadi, on behalf of Homestead High Global Warming Awareness Club and Sunnyvale Cool Cities Team, gave a presentation on energy efficient products in honor of Earth Day.

CONSENT CALENDAR

Councilmember Whittum pulled Items 1.E, 1.F, and 1.G.

Councilmember Howe stated he is also requesting to pull Item 1.G.

Mayor Spitaleri stated he received three requests from the public requesting to also pull Items 1.E. and 1.G.

City Clerk Gail Borkowski pulled Item 1.A.

Mayor Spitaleri pulled Item 1.B.

Vice Mayor Hamilton moved and Councilmember Howe seconded to approve Consent Calendar Items 1.C. and 1.D.

VOTE: 7-0

1.A. Approval of Revised Draft Minutes of April 1, 2008

City Clerk Borkowski stated she pulled the minutes for the purpose of identifying that a request had been received to add text to the revised minutes under Item 5, page 16, last sentence. The additional text was added and revised copies of the draft minutes were distributed to Council and copies were placed in the public binders.

Councilmember Moylan stated previously when a Councilmember emails the city manager a correction to the minutes, revised draft minutes are then prepared and it is then presumed that the revised version becomes the minutes for Council's approval. Councilmember Moylan inquired if the process of the city clerk pulling the minutes is a new procedure because it seems like it will take more time. Councilmember Moylan stated when revised minutes are on the dais he assumes they are for Council approval unless someone has an objection.

City Clerk Borkowski stated she pulled the minutes to bring the change to Council's attention; however, staff will follow Council's request not to pull revised minutes.

Vice Mayor Hamilton moved and Councilmember Howe seconded to approve the revised draft minutes of April 1, 2008.

VOTE: 7-0

1.B. Approval of Draft Minutes of April 8, 2008

Mayor Spitaleri stated he pulled the April 8, 2008 draft minutes due to an error on page 5 in which he is identified as Vice Mayor Spitaleri instead of his correct title of Mayor Spitaleri.

City Clerk Borkowski stated staff will make the correction.

Public comments opened.

No speakers.

Public comments closed.

Vice Mayor Hamilton moved and Councilmember Howe seconded to approve the draft minutes of April 8, 2008 with the correction on page 5 under Public Comment, to reflect

Mayor Spitaleri instead of Vice Mayor Spitaleri.

VOTE: 7-0

1.C. Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

**1.D. RTC 08–120 List of Claims and Bills Approved for Payment by the City Manager
– Lists No. 396 & 397**

Staff Recommendation: Council reviews the attached lists of bills.

**1.E. RTC 08–118 Mary Avenue Extension Project Appropriation of Revenue and
Budget Modification No. 39**

Councilmember Whittum inquired if Santa Clara Valley Transportation Authority (VTA) has completed their work on this project. Transportation and Traffic Manager Jack Witthaus explained that the work on this project is in progress.

Councilmember Whittum verified with Manager Witthaus that there is a significant amount of additional work required to meet Caltrans requirements for project approval beyond the environmental impact report (EIR).

Councilmember Whittum inquired if a large amount of the funding will go toward engineering the bridge project and Manager Witthaus responded that was correct on a conceptual level.

Public comments opened.

Dan Hafeman stated he requested to have this item pulled because he is concerned over the amount of funding that is going toward engineering studies for the bridge project prior to the total project being approved and the EIR being completed. Hafeman stated that it appears that Lockheed Martin, VTA and the City of Sunnyvale have already made a decision about this project.

Councilmember Whittum asked Hafeman what he would recommend and Hafeman stated if the City still has a choice, he would recommend that the City return to VTA and engineer a project that will assist with the traffic problem.

Gopal Patangay stated he has previously voiced his concerns over this project. Patangay stated he is against Council's approval of this item.

Public comments closed.

Councilmember Moylan verified with Manager Witthaus that should Council decide not to approve this item, the City would be in ~~breach~~ **breach** of an agreement.

Director of Public Works Marvin Rose explained that the City could appropriate \$250,000 from another source; however, Lockheed Martin gave the City the funds for this project.

Councilmember Whittum stated he will oppose the motion as he does not support further

conceptual engineering without consideration of the alternatives involved.

Councilmember Lee stated the City is obligated to use the money already received from Lockheed Martin and he supports moving forward with this expenditure as to not be found in ~~breach~~ **breach** of contract. Councilmember Lee stated he will support this motion in order to not be in ~~breach~~ **breach** of the agreement although his support of the motion is not an indication that he will be supporting the extension in the future.

Councilmember Whittum stated Council could take action to forward this item to a future agenda in order to allow time to review in detail the conceptual engineering. Council would still be able to keep the commitments that the City has made.

Vice Mayor Hamilton verified with Manager Witthaus that staff's objectives are to assess the EIR for the Mary Avenue project as it is planned and to look at alternatives as a part of that process and then bring information to Council for a decision on the environmental impacts. Manager Witthaus explained that another important consideration is what Caltrans' position would be on this project as it crosses two major freeways. Manager Witthaus explained Caltrans is a major player as to whether this project proceeds. Staff is currently preparing information for Council's consideration regarding Caltrans' position on this project.

Vice Mayor Hamilton verified with Manager Witthaus that staff will be looking at expanding the scope of the alternatives contained in the EIR.

Vice Mayor Hamilton stated it is possible that Caltrans will not approve of the Mary Avenue extension but that will not be known until these studies have been funded.

MOTION: Vice Mayor Hamilton moved and Councilmember Moylan seconded to approve Alternative 1: Council approves Budget Modification No. 39 to appropriate \$250,000 from the Capital Projects Fund/Traffic Mitigation Projects Sub-Fund Reserve to Project 825630 – Mary Avenue Extension Engineering/Environmental Analysis to pay VTA for services performed on the project.

VOTE: 6-1 (Councilmember Whittum dissented)

Other Items

- 1.F. **RESOLUTION Adoption of Resolution to Authorize the City of Sunnyvale to
RTC 08–116 Receive Federal and State Criminal History Information for
Applicants Who Request Certain Licenses or Permits through the
Department of Public Safety to Work in the City**

~~Councilmember Whittum stated public comments may be opened.~~ **Mayor Spitaleri called, "Councilmember Whittum." Councilmember Whittum stated, "Open the public hearing as far as I am concerned." Mayor Spitaleri said, "Ok."**

Public comments opened.

No speakers.

Public comments closed.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 1: Council adopts the resolution authorizing the City of Sunnyvale to access federal as well as state summary criminal history information for applicants of licenses and/or permits for adult entertainment establishments, massage establishments and applicants who perform massage therapy, for applicants who own and operate taxicabs under an exclusive taxicab franchise within Sunnyvale city limits, for pawn brokers and applicants who have second hand dealer businesses, and firearms dealers.

Councilmember Whittum stated he opposes this item as the resolution is vaguely worded. Councilmember Whittum stated he is in favor of a specific resolution that is limited.

Councilmember Swegles stated he is in favor of background checks being performed on those who sell items on eBay.

Councilmember Lee requested the city attorney clarify the resolution because it does not appear to require background checks on those who sell items on eBay. City Attorney David Kahn stated the resolution does allow background checks for specific groups such as second-hand dealers or pawn brokers; however, most items being sold on eBay are not from these groups. City Attorney Kahn explained that if a store received items on a regular basis and then sold them that could possibly come under the definition of a second hand dealer and be subject to a criminal background check. City Attorney Kahn stated home use or casual use of eBay would not permit background checks on the sellers.

Councilmember Whittum stated the resolution is quite general and would leave the decision on what is permitted to the state legislature and City Attorney Kahn agreed that would be correct.

Councilmember Moylan stated he is in agreement with Councilmember Lee that it does not appear this particular non-controversial consent calendar item is meant to affect casual or home sellers of merchandise.

Councilmember Howe verified with Director of Public Safety Don Johnson that he does not have enough staff to check on eBay users.

VOTE: 6-1 (Councilmember Whittum dissented)

1.G. RTC 08–122 Adoption of a Work Plan for the Kaiser Hospital Access Study – Study Issue

Councilmember Whittum stated the Kaiser work plan studies traffic from this site; however, there is not a final plan for this site or a clear understanding of the access areas, such as whether Forge Drive is an access point. Councilmember Whittum verified with staff that because Forge Drive is not located on the site, staff would have to outline the issues involved with using this as an access point because it is privately owned.

Councilmember Howe stated there are a number of potential entrances to Kaiser – such as Hillsdale Avenue – and inquired if all possible access areas (including private property) will be included in the study. Manager Witthaus stated staff is looking at a number of alternative entrance sites to the south, including Forge Drive, even though it is under

private ownership. Manager Witthaus stated staff will be looking at the feasibility of alternative access sites.

Councilmember Howe inquired whether staff would bring this item back to Council in the event that Kaiser stated they only wanted the left hand turn studied. Witthaus responded that staff would return to Council with any change in the study. Councilmember Howe verified that the study would be done by the City, not Kaiser. Councilmember Howe verified with Manager Witthaus that the study would be independent and objective and not tied to the funding.

Councilmember Swegles thanked staff for supplying copies of previous minutes on this item and stated he found it interesting that previously Forge Drive was being considered as an exit.

Vice Mayor Hamilton verified with Director of Public Works Marvin Rose that the areas to be studied include Homestead, Lawrence Expressway access, and the west and the south access locations.

Public comments opened.

Werner Gans stated he understood that the purpose of the study was to identify what type of traffic impact to the surrounding neighborhood would be created if the left-hand turn was put in place. Gans stated opening up Forge Drive is not a solution because it will create traffic problems onto Quail.

Gans inquired whether the traffic study would include studying Kaiser at full build-out as identified in Kaiser's development plans. Manager Witthaus responded that the study will include the full build out.

Gans inquired whether the study would include the office building being planned for Forge Drive. Manager Witthaus stated staff will coordinate with the City of Cupertino regarding any planned land uses and will incorporate those uses into the study. Manager Witthaus stated a near-term scenario analysis and a long range analysis will be performed.

Gans inquired if he could obtain a copy of the minutes that Councilmember Swegles referred to and Councilmember Whittum responded that the minutes could be emailed to Mr. Gans by staff.

City Manager Amy Chan explained that the City of Sunnyvale adheres to the Public Records Act and there is an established process to make a request. City Manager Chan stated requests for information not found on the City's Web site requires submitting a request through the public records request process.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 2: Council adopts the work plan for the Kaiser Hospital Access Study with modifications:

- Council approves asking Kaiser to fund the traffic study; however, should funding not be received from Kaiser, Council directs that the traffic study will not be done.
- Council approves the work plan to include at all points of access, including neighborhoods that go into Cupertino and Santa Clara.

Councilmember Whittum stated he opposes negotiating the scope and the funding with the real party at the same time.

Councilmember Whittum stated he would also like to see an agreement with Kaiser that they are willing to fund the project as they previously agreed upon.

Councilmember Whittum expressed concern for the residents of the area and stated he would like staff to return to Council with more detail on this project prior to moving ahead.

VOTE: 6-1 (Councilmember Whittum dissented)

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

City Manager Chan stated she would like to respond to concerns brought about by the Morse Park Neighborhood Association President a few weeks ago regarding an electric fence at the John W. Christian Greenbelt at Fairwood Park. City Manager Chan stated staff investigated the area and found there are two fences at this site; with the second fence having an electric portion beginning at seven feet from the ground. The United Parcel Services (UPS) at the site informed staff that they consider the fence safe as the fence produces a jolt and nothing more than that. Staff has encouraged UPS to consider putting up more warning signs in the area.

City Manager Chan stated a Morse Park neighborhood association representative spoke at a previous Council meeting during public comments and represented that the City had collected 90 million dollars in park dedication fees to build a park on Morse Avenue. The speaker requested that Council support a new park at this location. City Manager Chan stated the actual park dedication fees collected in that area so far are slightly less than four million dollars. City Manager Chan stated it would take about \$4.2 to \$4.7 million to build the park. City Manager Chan stated as a comparison, a few years ago Plaza del Sol Park was built at the cost of \$6 million. City Manager Chan stated Morse Park is scheduled to be constructed in 2010/11 and currently the City has a placeholder for this park on the capital improvement project as an unfunded project.

City Manager Chan stated the City collects approximately \$865,000 in revenue a year; however, when the City begins to build the park, that revenue stream will be lost. City Manager Chan explained that the operating maintenance costs of \$115,000 are offset by the revenue stream.

PUBLIC COMMENTS

John Ikner spoke of concerns over who owns the sound wall at Fremont Avenue and Albion Lane. Ikner stated he is attempting to find out who has the maintenance agreement and responsibility for the sound wall. Ikner stated all research he has done identifies that the City is the owner of the sound wall.

Charles Castillo spoke of concerns over the sound wall at the back of his property which is leaning toward Fremont Avenue. Castillo explained that he continues to obtain contradictory information from the City as to who has responsibility for the sound wall. Castillo offered a suggestion that the City of Sunnyvale and the homeowners form a partnership to replace the sound wall.

Vice Mayor Hamilton suggested the city attorney look into this matter and then place this item on a future agenda. Vice Mayor Hamilton explained that Council is not able to take action on this item because at this time it has not been placed on an agenda.

City Attorney Kahn explained that this issue has already been reviewed by his office and staff has concluded that the sound wall does not belong to the City.

Councilmember Howe requested the city attorney provide Council with a copy of the letter he sent to Castillo's lawyer. City Attorney Kahn agreed.

Craig Fuji stated the sound wall in his back yard is also leaning and he is concerned over liability. Fuji stated that a document does not exist stating who owns the sound wall.

Mayor Spitaleri disclosed he went to this site to view the fence and met with the neighbors. Mayor Spitaleri explained that the neighbors were told that they could not replace the wall with a wooden fence, because it was a sound wall. Mayor Spitaleri inquired as to who declares a wall to be a sound wall and also questioned whether the homeowners were correctly informed about not having the ability to replace the sound wall if it is damaged.

Mayor Spitaleri verified with the city manager that she will report back to Council and include answers to the questions that the mayor and the residents have raised regarding this issue.

Barbara Fukumoto thanked Council for all that they have done to reduce greenhouse gases and requested Council's assistance in organizing the community to reduce greenhouse gas pollution.

Tap Merrick inquired as to why the annual salary for the city manager is competing with private industry and suggested the higher salaries in the City be restructured to be more reasonable.

PUBLIC HEARINGS/GENERAL BUSINESS

2. **RTC 08-119 2007-0928 Appeal by the Applicant of a decision by the Planning Commission denying a Variance from Sunnyvale Municipal Code Section 19.46.060 to allow one covered and one uncovered parking spaces where two covered and two uncovered parking spaces are required, in conjunction with a 400 square foot addition at the property located at 697 Lakehaven Drive (near Hiddenlake Drive) in an R-0 (Low Density Residential) Zoning District**

Planning Officer Trudi Ryan presented the staff report.

Vice Mayor Hamilton inquired whether the municipal code requires that uncovered parking spaces must equal the same number of covered spaces.

Planning Officer Ryan stated that a subtlety in the parking code requires new residential developments to have two covered and two uncovered spaces (or two driveway spaces in front of the garage). Most developments are built with the garage set back a sufficient distance from the street to meet the set backs and allow for two uncovered spaces in the driveway. However, the section of the parking code that addresses additions to homes which exceed the 1,800 square foot threshold, or homes with more than three bedrooms, states a requirement for two covered parking spaces. In most cases, the two covered spaces allow for the additional driveway spaces anyway, but this is a small subtlety in the code. Planning Officer Ryan stated this may only affect properties that are legal non-conforming with one car garage or one carport space.

Planning Officer Ryan stated when staff returns to Council with an ordinance containing

the other parking code changes, staff will flag this item for Council's attention.

Vice Mayor Hamilton verified that tandem parking is not recognized.

Mayor Spitaleri invited the applicant to speak.

Juan Lorenzo, applicant, stated he is looking for options to allow for his one-car garage. Lorenzo stated the neighbors have complained about the number of cars in the street, but they are not his cars.

Councilmember Swegles explained to Lorenzo that another issue exists because he built a shed on the back of his property and converted it to living space without permits. Lorenzo stated he did not obtain permits because he was told by the City that he could build a shed. Lorenzo stated he has tried to obtain permits since the conversion but the City will not issue any permits for his shed. Councilmember Swegles asked Lorenzo if he had new evidence he would like Council to review. Lorenzo stated he offered to make his driveway bigger to allow for three parking spaces, in addition to his one covered space; however, staff would not approve this option because an enlarged driveway would be next to the neighboring driveway and the City will not allow two driveways to be next to each other.

Councilmember Swegles explained that Council would need new evidence to support the situation in order to overrule the Planning Commission's decision. Lorenzo stated he would like to build a two-car garage at the back of his home but he was told that would not be an option.

Vice Mayor Hamilton verified with Lorenzo was told by staff that he could not have living space at the back of his yard and yet he still converted the shed into living space knowing that it was not legal. Lorenzo explained that he needed the space as he is helping his parents.

Mayor Spitaleri verified with staff that the fact the shed was converted to living space is why the additional parking spaces are required. Planning Officer Ryan stated the existing house square footage exceeds the thresholds; however, because it was built before the new regulation was in place, the existing house is considered to be legal non-conforming.

Mayor Spitaleri inquired whether Lorenzo understood that if he removed the living unit from the shed, he would not have a parking problem. Lorenzo stated that would be a problem as he needs the living space in the shed. Mayor Spitaleri explained that if Lorenzo wishes to resolve the issue, he will need to remove the living unit in the shed.

Public hearing opened at 8:44 p.m.

No speakers.

Public hearing closed at 8:44 p.m.

Mayor Spitaleri invited Lorenzo to give closing remarks. Lorenzo declined.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 1: Council denies the appeal and upholds the decision of the Planning

Commission to deny the variance.

VOTE: 7-0

**3. RESOLUTION Resolution for Service Contractor Code of Conduct
RTC 08-128**

Councilmember Lee presented the report to Council.

Councilmember Howe inquired if the resolution would be mandatory for businesses and Mayor Spitaleri responded that it would not be a mandatory resolution.

Councilmember Howe asked for a detailed explanation of “neutrality in unionization.” Mayor Spitaleri responded that a union can be formed if employees of an organization by majority wish to join a union then a union would be recognized by the employer, or employees could decide to petition for an election.

Councilmember Howe inquired if the proposed resolution would imply that Council recognizes any manner of unionization and Mayor Spitaleri explained that the resolution does not offer a recommendation one way or the other, rather the recommendation is to offer a code of conduct to employers. To unionize or not is entirely up to the employer and employees, and is not mandatory.

Councilmember Howe inquired if the resolution leaves the question of unionization up to the employees and the businesses. Mayor Spitaleri stated if an employer agreed to let the employees chose whether to become a union, and the majority of the employees agreed they wanted to have a union, then there would be a union. However, it would be up to the employees to make that decision.

Councilmember Howe inquired if forming a union would require an agreement between management and the employees. Mayor Spitaleri stated it would require an agreement if the company preferred that their employees hold an election. It would be up to the union to decide if they held an election.

Councilmember Howe verified that this resolution does not force either party to form a union.

Councilmember Swegles disclosed he met with several parties regarding this item. Councilmember Swegles inquired if employees currently have the same rights regarding unionization. Mayor Spitaleri responded that although every citizen has the right to organize, the issue in question is whether an employee feels comfortable speaking up about forming a union.

Councilmember Swegles verified that what is being recommended would not force anyone one in one direction or the other with regard to unionization.

Councilmember Whittum inquired what was meant by fair wages and benefits and how a fair wage would be decided. Mayor Spitaleri stated minimum wage is required by law but the employer reviewing the resolution may have their own opinion on fair wages.

Councilmember Whittum asked Mayor Spitaleri to explain the process of allowing the

labor market to set a fair wage. Mayor Spitaleri stated that is usually worked out between individuals on the basis of discussion and reasons brought forth in support of a certain wage.

Mayor Spitaleri explained that the proposed resolution offers awareness about workers' right to afford to have shelter and food on their tables. Mayor Spitaleri stated the resolution recommends to the local businesses that their work force should be treated fairly.

Councilmember Lee stated the resolution represents an explanation of fair wages and benefits for workers. Councilmember Lee explained that this issue does affect the county and City in that residents pay for individuals who are not able to pay for medical care.

Councilmember Whittum inquired as to what is meant by the statement of cooperation between management and labor. Mayor Spitaleri stated the intent is to have a dialogue between both parties and find a way to work together to address the issues. Mayor Spitaleri stated that this resolution is non-binding and the City would have no part in employee/employer relations. Mayor Spitaleri stated the resolution simply recognizes that companies need to address these issues which have an impact on the community.

Vice Mayor Hamilton disclosed she had conversations with individuals from both sides of this issue.

Councilmember Moylan disclosed that he has been lobbied from both side of this issue.

~~Councilmember Moylan stated the intent of the resolution regarding neutrality is to encourage Sunnyvale businesses to not strictly hire non-union contractors, rather to remain neutral in their hiring practices. Mayor Spitaleri explained that the resolution does not require the employer to select union or non-union contractors.~~

Councilmember Moylan stated, "It's been many years since I diagramed a sentence and I will admit that, that last clause was beyond my ability to do it. I had a much more simplistic interpretation of this rather broad and general language with regard to neutrality and please tell me if this is wrong. This applies to contractors to Sunnyvale businesses. The presumption is that when a Sunnyvale business decides to contract out some of its labor, it doesn't go out and say we're only taking non-union contractors, we're neutral as to whether our contractors are unionized or not. Is that wrong?" Mayor Spitaleri responded, "Yes, that is wrong. Neutrality is a tool. If a union were to address a vendor and the vendor said well look, if my employees want to organize they can, so the union would then go in and get significant cards or the majority of the workers signing cards saying yes they want an organization. Once they have that then they would then be classified as a bargaining unit or a union, under whatever union, and then they would enter into negotiations for a contract in terms and conditions of employment, but a person can go out and pick and chose any company that they want to do business for them. This doesn't stop them from doing it, it doesn't require them to pick union or non-union." Councilmember Moylan responded, "Yes, that is what I thought."

Councilmember Moylan stated this resolution is an expression of Council's encouragement to Sunnyvale businesses in regard to how they deal with their contractors. Councilmember Moylan explained through the resolution, Council is recognizing the

situation for workers whether they are employees or contractors of businesses and regardless if they form a union or not. Councilmember Moylan stated his impression of the resolution is that Council recognizes that Sunnyvale businesses treat their employees well, and encourages businesses to use contractors who also treat their employees well.

Councilmember Whittum disclosed he met with representatives from Sunnyvale Employees Association (SEA) and Service Employees International Union (SEIU) but not in connection with this issue as far as he is aware.

Councilmember Whittum inquired what the business community's response is to the proposed resolution as currently worded.

Mayor Spitaleri stated that he and Councilmember Lee met with Sunnyvale Chamber of Commerce President Suzi Blackman and discussed many aspects of the proposed resolution. Mayor Spitaleri stated that agreement was reached in some areas; however, they could not reach agreement on other areas, and, after five or six meetings, it was determined that the resolution needed to move forward.

Councilmember Lee stated when the parties first came together to work on this document, the document was quite different. Councilmember Lee explained that all parties agreed on most of the language within the document, with the exception of one paragraph.

Mayor Spitaleri disclosed he met with the Chamber of Commerce on this issue.

Public hearing opened at 9:05 p.m.

Greg Ayers spoke about his work history with Sunnyvale corporations and explained how he has been treated as an employee in the food-service industry. Ayers spoke in support of the Code of Conduct.

Andy Schwiebert, member of the Interfaith Council of Santa Clara County, spoke in support of the Code of Conduct. Schwiebert stated the Sunnyvale Presbyterian Church religious leaders recently held a community forum on human dignity among contracted service workers. Schwiebert stated concern for Silicon Valley working families and spoke of the importance of neutrality as an important way to ensure workers receive dignity in the workplace.

Reverend Carol Been spoke about the rights that workers are being denied in today's workforce when organizing a union. Been stated the neutrality agreement would encourage businesses to honor the right for workers to form a union without intimidation or coercion against this practice.

Councilmember Whittum inquired if Been met with local business leaders or the Sunnyvale Chamber of Commerce. Been stated they meet with business leaders across the state and acknowledged that they should talk to the Sunnyvale Chamber of Commerce.

A brief discussion ensued between Councilmember Moylan and Been over possible coercion on both sides of this issue.

Councilmember Moylan identified that many other cities have signed a similar code and

asked Been if she is aware of any negative effects occurring as a result of adopting this code.

Been stated the issue surrounds how citizens in the community hold each other accountable for a fair process. Been stated the current system is broken and this is really a moral position. Council is being asked to send the message that there is a better way, than the current process, to ensure a fair process for workers is in place.

Sylvia Ruiz, Political Director of SEIU local 1877, spoke of the union's support for the proposed resolution.

Councilmember Whittum asked Ruiz to explain what type of intimidation workers experience when attempting to organize. Ruiz stated neutrality is sought in order that workers may be free of intimidation and to support the right to form a union. Ruiz cited a local experience in which workers attempted to unionize and were harassed.

Councilmember Whittum inquired how a resolution will stop intimidation. Ruiz stated the union is aware that the resolution will not stop intimidation and that it is ultimately up to the businesses to decide whether to act responsibly or not. However, adopting the resolution will set a standard for the City.

Vice Mayor Hamilton stated sending this type of message seems to assume that local businesses are not acting responsibly. Ruiz stated businesses do not automatically act irresponsibly; however, the contractor is not the direct employer.

Vice Mayor Hamilton inquired why Ruiz is not going directly to the employer with this concern and Ruiz the union is going to businesses but they are also coming to Council with the request that Council make a statement supporting workers right to fight for fair wages and to be free of intimidation. Ruiz stated the resolution also sends a message to the local businesses outlining Council's values.

Mayor Spitaleri explained that the City is full of responsible business owners but there may be a few that would benefit from this message.

Reverend John Sullivan from Santa Clara expressed his support for the non-binding service code of conduct. Sullivan spoke about the current conditions for service workers which involve low wages and poor health care benefits.

Wilma Angeles spoke about how her employer offered their approval when the employees requested to organize a union. Angeles explained that their first negotiated contract made a huge difference to the workers.

Suzi Blackman, President Sunnyvale Chamber of Commerce, representing the Sunnyvale Chamber of Commerce Board of Directors and Sunnyvale businesses, requested that Council dismiss the proposed resolution as an unwarranted interference by government and private business. However, the chamber is aware of the pressure that the union has placed on Council to approve this resolution which has made dismissing the resolution unlikely and therefore, the chamber has submitted revised language for Council's consideration. Blackman passed out copies of the revised text to Council.

Blackman explained that the chamber feels their proposed changes still meet the goal to

raise awareness of the issues facing subcontracted employees. Blackman explained that the revised text for the resolution received 60 percent approval by the business community and the chamber urges council to adopt their revised resolution. Blackman explained that labor and neutrality are areas of disagreement.

Councilmember Swegles explained that the resolution is a suggestion to the businesses, not a mandate and questioned if that is acceptable to the chamber. Blackman stated even though Council does not plan to enforce this resolution, the business community is concerned with the use of "neutrality" in the document and how unions have used the language in this type of resolution as a rationalization to cause disruption in local businesses.

Councilmember Moylan inquired if the chamber had found any examples of major issues occurring with businesses in other jurisdictions where a similar resolution had been adopted. Blackman stated they had not but that does not give approval or support for having such a resolution, especially since it does not make any difference one way or the other.

Vice Mayor Hamilton thanked Blackman for coming before Council and attempting to work out a solution when a large portion of the chamber does not support this resolution.

Councilmember Whittum inquired as to Blackman's definition of fair wages and benefits. Blackman responded fair wages are in compliance with state and federal laws and if companies are not providing that to their employees, there are provisions in the laws to address those issues.

Councilmember Whittum inquired about the chamber's view regarding concerns over widespread intimidation occurring and whether or not this resolution is necessary. Blackman stated initially the chamber did not feel this resolution was necessary at all. However, if it is important for Council to set a standard then there are other means to achieve that goal such as a letter to the businesses signed by Council and supported by the chamber to the local business community which would send a strong statement about the importance of these issues. Blackman stated this would be as strong as a non-binding resolution.

Councilmember Whittum verified with Blackman that the labor board has not come before the chamber regarding these issues.

Andrew Dadko, organizer, passed out a list of companies in California that have worked with neutrality language when organizing.

Councilmember Moylan noted that the chamber's proposed resolution mentions worker retention; whereas, the original proposed resolution does not. Councilmember Moylan stated in his opinion worker retention is the biggest issue of all.

Mayor Spitaleri stated the local businesses were concerned that if worker retention was included, a new business coming in would have to employ all the workers from the subcontractor. Since there was confusion in this area and because that issue should be part of the bargaining rights, it was decided to leave it out of the resolution and up to the bargaining units.

Vice Mayor Hamilton verified that Dadko supports the process that Mayor Spitaleri and Councilmember Lee engaged in with all parties and the language they submitted for the proposed resolution is what he would like to see adopted by Council.

Councilmember Moylan disclosed the next speaker is one his students.

Dave Mitchell, student and labor activist, identified that similar resolutions do exist in cities within the Bay Area. Mitchell stated he is a former student of Councilmember Moylan and they met and discussed what evidence might be needed when speaking before Council. Mitchell explained his research has shown that the business community in San Mateo has not suffered as a result of passing a similar resolution. Mitchell requested that Council to take a moral stance on this issue.

Councilmember Whittum inquired as to Mitchell's thoughts of recognizing socially-responsible businesses instead of adopting the resolution. Mitchell stated he would be in favor of adding that recognition in addition, but not instead of, the resolution.

Mayor Spitaleri granted Been's request to speak again. Been cited an example of how the laws do not support workers who chose to organize.

Councilmember Howe stated it is Council's policy to recognize a speaker only once and since Been spoke twice, he is requesting Blackman have an opportunity to speak once again. Mayor Spitaleri agreed.

Blackman stated she wished to clarify that the document she passed out to Council was previously discussed with Councilmember Lee and Mayor Spitaleri and is not new language.

Councilmember Whittum inquired as to what issues the resolution sponsors, Councilmember Lee and Mayor Spitaleri, have regarding the revised resolution received from the chamber.

Public comments closed 10:02 p.m.

Mayor Spitaleri responded that all parties discussed the chamber's language and then incorporated the language into the proposed resolution. Mayor Spitaleri stated the only real difference is the removal of "neutrality" from the chamber's version.

Councilmember Lee stated he supports including the first two paragraphs of the chamber's version into the proposed resolution. Councilmember Lee stated one area that all parties seem unable to reach agreement is the language around "neutrality of unionization".

MOTION: Councilmember Lee moved and Councilmember Moylan seconded to adopt the proposed Resolution for Service Contractor Code of Conduct as stated

with:

add after paragraph 2: "Whereas, the business in the Sunnyvale community ("Sunnyvale Businesses") are committed to offering fair wages and benefits in compliance with state and federal laws; and

add after paragraph 4: "Whereas, Sunnyvale Businesses believe it is appropriate to

contract only with vendors that they believe offer employees fair wages and benefits and comply with State and Federal laws.”

and

Consider offering a program to recognize socially responsible businesses.

Vice Mayor Hamilton requested the second part of Councilmember Lee’s motion be taken separately.

Councilmember Lee agreed.

Vice Mayor Hamilton requested that the section about ethics, worker retention policies, and various other appropriate policies be added back into the resolution. Vice Mayor Hamilton stated these are important areas.

Councilmember Lee stated he has no problem with adding that back in but from the city attorney’s view that language was too vague for the resolution.

Vice Mayor Hamilton stated this is a non-binding resolution and she does not see any issue with the vagueness of the language. Ethics and worker retention policies are important aspects of the resolution and they offer companies a guide of what Council views as important.

Councilmember Howe requested his following comments be included in the minutes: Councilmember Howe asked, “is it mandatory for the businesses, this resolution?” Councilmember Lee responded that the resolution is not mandatory for businesses. Councilmember Howe asked “is the Sunnyvale City Council either telling the businesses to unionize or not unionize and/or the workers to either unionize or not unionize.” Councilmember Lee responded, “Absolutely not.”

Councilmember Moylan asked for clarification as to whether Vice Mayor Hamilton’s amendment to add additional language had been accepted. Councilmember Lee stated the additional language should be added to the resolution and offered a suggestion for the placement of that language as highlighted below:

BE IT FURTHER RESOLVED that the City Council should, and hereby does, strongly encourage all Sunnyvale businesses to engage in due diligence, **including inquiring as to vendor’s ethics codes, worker retention policies, and various other selected policies**, in an effort to do business...

City Attorney Kahn suggested “various other selected policies” be clarified a little more.

Vice Mayor Hamilton suggested the selection read as follows:

BE IT FURTHER RESOLVED that the City Council should, and hereby does, strongly encourage all Sunnyvale businesses to engage in due diligence, **including inquiring as to vendor’s ethics codes and worker retention policies**, in an effort to do business...

Councilmember Lee agreed to Vice Mayor Hamilton’s revision.

Vice Mayor Hamilton offered a friendly amendment to remove the following text from the

resolution: "...including neutrality towards unionization."

Councilmember Lee stated he wished to move forward with the motion as it is currently and should it not pass, that idea can be further discussed.

Councilmember Lee did not accept the friendly amendment.

Councilmember Swegles stated he is in favor of adding the ethics and work-retention section to the resolution; however, he is not able to support the motion as he opposes the language regarding "neutrality towards unionization".

Councilmember Whittum stated he is against the motion because it is not Council's role to define fair wages and benefits in the community. Councilmember Whittum stated this is not what the community needs from the City, rather it is a feel-good measure.

Councilmember Moylan stated it is not Council's place to tell Sunnyvale citizens what is moral; however, it is Council's job to attempt to assist the community. Councilmember Moylan stated the contractor issue comes up quite often in the public and private sector because money is tight and companies contract services as a means to save money. Councilmember Moylan stated that the only way money can be saved when using a sub-contractor is if those working for the sub-contractor are paid a lot less than the people working for the employer. Councilmember Moylan stated when a decision is made to contract work from the outside then the cost is shifted elsewhere which is the primary reason for this resolution. Councilmember Moylan stated the resolution sends the message that it is not acceptable to transfer that cost onto Sunnyvale residents who happen to be workers and that is why he is able to support this resolution.

Councilmember Moylan stated he views the neutrality issue as coercion from both sides and that the more important issue surrounds Council asking local employers to urge their contractors to take care of their workers as well as they take care of their own workers. Councilmember Moylan stated that is all Council is asking for in this resolution and it is Council's role to send this message.

Councilmember Howe inquired if Council has any issue with the questions that he posed earlier to Councilmember Lee, which were also included in the minutes. Mayor Spitaleri responded that there was no issue with the questions.

Vice Mayor Hamilton stated she sees both sides of this issue. Vice Mayor Hamilton agreed that everyone wants to see fair wages and employees treated fairly; however, not every business offers that to their employees. Vice Mayor Hamilton stated although she agrees with Councilmember Whittum that it is not really Council's place to be involved in this issue, she will support the motion on the basis that the Chamber of Commerce was involved and that agreement was reached in several areas.

Mayor Spitaleri stated he wished to recognize the union and Blackman, representing the chamber, in their efforts to come together to try and work out language that all parties could live with. Mayor Spitaleri explained that it is important to raise the consciousness of the community to the issues of "shadow employees," the service workers.

Councilmember Moylan stated the item that persuaded him the most on this issue was the research that his former student, Dave Mitchell, submitted to Council. Councilmember

Moylan stated he wished to share with the business community that it does not appear that anything bad will happen from passing this resolution; however, should an issue arise from the approval of this resolution, Council will fix the issue.

Restated MOTION:

MOTION: Councilmember Lee moved and Councilmember Moylan seconded to adopt the proposed Resolution for Service Contractor Code of Conduct as stated

with:

add after paragraph 2: "Whereas, the business in the Sunnyvale community ("Sunnyvale Businesses") are committed to offering fair wages and benefits in compliance with state and federal laws; and

add

after paragraph 4: "Whereas, Sunnyvale Businesses believe it is appropriate to contract only with vendors that they believe offer employees fair wages and benefits and comply with State and Federal laws."

add

to highlighted section to last paragraph: BE IT FURTHER RESOLVED that the City Council should, and hereby does, strongly encourage all Sunnyvale businesses to engage in due diligence, **including inquiring as to vendor's ethics codes and worker retention policies** in an effort to do business...

VOTE: 5-2 (Councilmembers Swegles and Whittum dissented)

MOTION: Councilmember Lee moved and Councilmember Whittum seconded to authorize the mayor to work with the Chamber of Commerce and/or local businesses to start a program to recognize socially responsible businesses in the City of Sunnyvale.

Councilmember Lee stated it is important to recognize companies that are doing well and achieved the objectives contained in the newly adopted resolution. Councilmember Lee stated this program would also assist in encouraging others.

Vice Mayor Hamilton stated she does not support the motion as it requires Council to make a judgment call regarding whether a company is doing the right thing or not, which is not a quantifiable measure. Vice Mayor Hamilton stated this is too close to favoring one company over another which is not Council's position.

Mayor Spitaleri expressed his concern over what would be used to measure the success of a company in this area. Councilmember Whittum stated Council could allow the Chamber of Commerce to nominate a few members.

Councilmember Swegles stated he does not support this motion because guidelines would be needed to explain the expectations for a businesses performance and although it is a wonderful idea, he would rather thank all the business for showing due diligence for doing business in Sunnyvale, but not a special recognition.

Councilmember Moylan stated many employers, especially the larger employers, have employee-relations positions that steer corporate money into various community based activities. Councilmember Moylan suggested companies could nominate themselves, present their information before Council and the mayor or a subcommittee could select the

one that appeared to do the most for the community who would then receive an award. Councilmember Moylan stated he has no problem with this motion and that it would be an easy thing to do.

Vice Mayor Hamilton responded that Council recently had an issue with another recognition program because the same people were being nominated year after year and the result was that now everyone who fits the qualification is being nominated. Vice Mayor Hamilton stated selecting those to be recognized would require a quantifiable judgment call and it is not a good idea.

Councilmember Swegles agreed with Councilmember Moylan that many local companies have good public relations departments; however, there are small companies who do not have the time or the extra employees able to devote the time to qualifying themselves to the same degree for recognition by the mayor. Councilmember Swegles stated the same companies tend to be recognized every year because they have the staff and resources to spend qualifying for recognition whereas a small company does not have the same resources which cause an unfair advantage for larger corporations. Councilmember Swegles stated the concept is great but the overall logistics of putting this program in place is an issue.

Councilmember Howe stated there is an entire process set up for the recognition of green businesses and unless a checklist is in place for the proposed responsible business recognition program, this would be a bad program. Councilmember Howe stated this proposal needs a study issue. Councilmember Howe offered to co-sponsor a study issue with Councilmember Lee.

Councilmember Whittum stated the idea of this program is not to single out businesses for criticism. Councilmember Whittum stated the mayor is always free to recognize businesses or residents who have done something right.

VOTE: 3-4 (Councilmember Howe, Mayor Spitaleri, Vice Mayor Hamilton, and Councilmember Swegles dissented)

Motion failed.

Councilmember Lee proposed a study issue regarding instituting a program to recognize socially responsible businesses in the City of Sunnyvale. Councilmember Howe and Mayor Spitaleri requested to co-sponsor the study issue.

**4. ORDINANCE Introduction of Ordinance Amending Chapters 2.08 and 2.09 of the
RTC 08–121 Sunnyvale Municipal Code to Increase the City Manager’s Contract
Award Authority from \$50,000 to \$100,000**

Senior Management Analyst Pete Gonda presented the staff report.

Councilmember Lee left the dais.

Public hearing opened at 10:40 p.m.

No speakers.

Public hearing closed at 10:40 p.m.

MOTION: Councilmember Swegles moved and Councilmember Howe seconded to approve Alternative 1: Council adopts the Ordinance amending Chapters 2.08 and 2.09 of the Sunnyvale Municipal Code to increase the city manager's contract award authority from \$50,000 to \$100,000.

VOTE: 6-0 (Councilmember Lee absent)

City Clerk Borkowski read the title of the ordinance into the record.

PUBLIC COMMENTS (Continued)

Mayor Spitaleri reopened public comments.

City Clerk Borkowski stated the next speaker, Lorraine Larzabal, had to leave early but left a document for Council's review. City Clerk Borkowski passed out the document.

Councilmember Lee returned to the dais.

Yongja Walterskirchen stated she has an alternative solution to proposed sound wall for the noise from the construction and building of the new housing development. Walterskirchen is recovering from brain surgery. Walterskirchen proposed to have dual pane windows and sliding doors be installed in her home in place of the sound wall.

NON-AGENDA ITEMS & COMMENTS

COUNCIL: Councilmember Howe requested the comments he made earlier about Browning Smith be entered into the minutes record.

Councilmember Whittum questioned if staff will be preparing a report for Council regarding the eradication of the light brown moth. City Manager Chan stated the last city manager's weekly report provided some information on the moth and indicated that staff will provide an information report to Council unless other direction is given.

Councilmember Whittum questioned if an information item will be on an upcoming agenda and if it will include the twist-tie eradication efforts. City Manager Chan stated an information report will go to Council; however, it would not be an item placed on the agenda unless direction is given otherwise.

Councilmember Whittum stated information about what is going on with the eradication process and what implication there might be from the proposed eradication programs should be public information.

Councilmember Moylan stated he suspects the recent eradication information that Council has received may be a result of the members of the public who previously requested that Council take a position on this issue. The letters and pamphlets regarding the eradication efforts that Council has received may

have been generated from the recent public discussion.

Councilmember Whittum clarified that the twist-tie item is not regarding the implementation of aerial spraying, rather it is a form of an eradication program and that is not what the previous speakers were opposing.

Mayor Spitaleri reported that he has requested Vice Mayor Hamilton, Councilmember Howe, and Councilmember Moylan serve on the subcommittee for the recruitment process for a new city manager.

STAFF: None.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Approved Minutes of the Housing and Human Services Commission Meeting of February 27, 2008
- Approved Minutes of the Parks & Recreation Commission Meeting of March 12, 2008
- Draft Minutes of the Board of Library Trustees Meeting of April 7, 2008
- Study Session Summary – Review of Recruitment Plan for New City Manager

ADJOURNMENT

Mayor Spitaleri closed the meeting in honor of Browning Smith and noted that comments on his life had been read earlier by Councilmember Howe. Mayor Spitaleri called for a moment of silence.

Mayor Spitaleri adjourned the meeting at 10:47 P.M.

Gail T. Borkowski
City Clerk

Date